

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:22-CV-137-D

HEAT WAVE RECORDING, LLC,

Plaintiff,

v.

BLUEWATER RECORDINGS, INC.,  
BOBBY TOMLINSON, CHARLES  
WALLERT, AUDIO AND VIDEO LABS,  
INC.,

Defendants.

**ENTRY OF DEFAULT**

This matter is before the clerk on the plaintiff's third motion for entry of default as to defendant Charles Wallert [DE-29].

Plaintiff initiated this action by filing a complaint alleging claims against defendant Wallert and others. As to defendant Wallert specifically, plaintiff asserted a claim for copyright infringement in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501 and also alleged that the corporate veil of defendant Bluewater Recordings, Inc., should be pierced to hold defendant Wallert and another individual defendant responsible for claims asserted against Bluewater. See Compl. [DE-1] ¶¶ 51-63; 112-128.

Plaintiff filed an affidavit of service as to defendant Wallert on April 23, 2022 [DE-9] stating he was served with a copy of the summons and complaint. On May 9, 2022, plaintiff filed a motion for entry of default, as well as an amended complaint [DE-15]. The amended complaint adds a claim for wrongful interference with a contractual right against defendant Wallert. See Amend. Compl. [DE-15] ¶¶ 102-106.

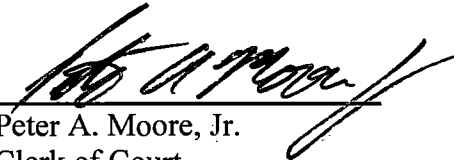
The clerk denied the motion for entry of default in an order filed on June 3, 2022 [DE-16]. In that order, the clerk explained that the record contained no showing of service of the amended complaint on defendant Wallert pursuant to Rule 4 of the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 5(a)(2) (“No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.”).

Plaintiff filed the second motion for entry of default [DE-18], stating that defendant Wallert was served with the amended complaint pursuant to Rule 5 of the Federal Rules of Civil Procedure. The clerk denied the second motion for entry of default [DE-20], again observing that plaintiff had failed to serve defendant Wallert pursuant to Rule 4.

On November 22, 2023, plaintiff filed an affidavit of service, stating that the amended complaint was served on Wallert via Federal Express delivery [DE-28] on March 7, 2023. That same date, plaintiff filed the instant motion for entry of default.

The record showing that defendant Wallert was served with the original and amended complaint under the federal rules, and has failed to plead or otherwise defend in this action, the motion for entry of default [DE-29] is GRANTED. Default is hereby entered against defendant Charles Wallert pursuant to Fed. R. Civ. P. 55(a).

SO ORDERED. This the 13 day of September, 2024.

  
Peter A. Moore, Jr.  
Clerk of Court